

# COMMONWEALTH OF AUSTRALIA

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Family Name	
Given Names	
Student Number	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Teaching Period	Semester 1, 2016

FINAL EXAMINATION	DURATION				
LWZ316 – Evidence	<table> <tr> <td>Reading Time:</td><td>20 minutes</td></tr> <tr> <td>Writing Time:</td><td>120 minutes</td></tr> </table>	Reading Time:	20 minutes	Writing Time:	120 minutes
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### INSTRUCTIONS TO CANDIDATES

### EXAM CONDITIONS

**You may begin writing from the commencement of the examination session.** The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

Any calculator is permitted

Any handwritten material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	2 x 20 Page Book 2 x Scrap Paper

**THIS EXAMINATION IS PRINTED  
DOUBLE-SIDED.**

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BLANK.**

All questions should be answered in the Answer Booklets provided. Please ensure that your name and student number have been written on the Answer Booklets.

## Section A

### Compulsory Question – ALL students must answer this question

**Total number of marks for this section: 30 marks**

Suggested Time allocation for Section A: 1 hour

#### Question 1

The Defendant, Xavier, is before the Court on one charge of being an accessory to armed robbery. The facts giving rise to the charge are as follows.

Zara was employed by Bond Security Pty Ltd as a security guard. On 13 September last year she was part of a crew comprised of herself and Quintin, both of whom were making cash deliveries from an armoured vehicle. Zara performed the deliveries and Quintin was the driver. At about 10am, the truck arrived at a bank. Zara left the vehicle with a bag containing \$12,000 in cash to be delivered to the bank. Quintin remained in the vehicle.

Zara was confronted outside the bank by a hooded man holding a sawn-off rifle, which he pointed at Zara's head. Zara grabbed the gun and forced the barrel down. In the struggle, the gun went off and Zara was shot in the lower abdomen.

There is no dispute that the person who shot Zara was Gavin, who has pleaded guilty and been sentenced in separate proceedings. At the time of the holdup, another man was seen by Zara in the company of Gavin. She could not identify that man as he also was wearing a hood. The case for the prosecution is that the other man was the defendant, Xavier.

A witness, Aadila, who was across the street from where the shooting of Zara took place, saw the offenders get into a car and the car drive off quickly. By this time both offenders had taken off their hoods. She did not know the make of the car but did write down the number plate on the back of her cigarette packet. It was NT101. While shaken from the gunshot, she states that she also got a good look at the faces of both Gavin and the other man.

Xavier was apprehended when police were called to his house for a domestic disturbance. Xavier was drunk and yelling loudly at his son, Peter, who had taken Xavier's phone and was filming his father. The police took Xavier's phone as evidence. Xavier was taken into custody. In addition to the footage of the domestic disturbance, the police discovered a picture on the phone which showed Xavier with Gavin next to a car with a partially obscured registration plate NT10. Xavier was then charged with being an accessory to armed robbery, but no charges were laid relating to the domestic disturbance.

Aadila attended at the police station and viewed a photo-board of 30 individuals compiled by the police. After looking at the photo-board, Aadila identified Xavier as one of the men she saw getting into the car after the shooting. The photograph of Xavier used by the police in the photo-board was a headshot cropped from the picture on Xavier's phone. At the time of the identification, Xavier was in police custody.

**You are to assume that the *Evidence Act 1995* (Cth) applies to this trial. With reference to the *Evidence Act 1995* (Cth), and the relevant case law, discuss the evidentiary issues that arise from the above facts. [30 marks]**

## Section B

**Students must answer EITHER question 2 OR question 3. DO NOT answer both questions**

**Total number of marks for this section: 30 marks**

Suggested Time allocation for Section B: 1 hour

### Question 2:

Axel is before the Court on one charge of arson. The prosecution alleges that Axel, who is a member of the Outsiders Motorcycle Group, set fire to the clubhouse of a rival group, the Lads of Loss, at 11.00pm on 2 December last year. Axel has pled not guilty to the charge.

The prosecution has told Axel's lawyers that it intends to call three witnesses. The first is Betty, who is Axel's 85 year old mother. Axel still lives with Betty. In an Electronic Record of Interview with police conducted on 15 December last year, Betty stated that she recalled seeing Axel go into the garage at about 9.00pm on 2 December and pick up a full 10 litre petrol can which was stored in the garage. She also recalled that Axel came home at 11.45pm smelling of petrol.

The prosecution also intends to call Conan, who is also a member of the Outsiders Motorcycle Group. In an Electronic Record of Interview with police conducted on 4 December last year, Conan stated that Axel was awarded the Outsiders highest honour, the Medal of Courage, for setting fire to the Lads of Loss's clubhouse.

Finally, the prosecution intends to call Doris, who is Axel's ex-girlfriend. She and Axel dated for 2 years but broke up after he was charged with the arson offence. Doris will state that, on 3 December last year, Axel came to her unit in an agitated state. When Doris asked Axel why he was upset, Axel replied: "Get off my back. I did a job for the Outsiders last night that may backfire on me".

Two days before the trial, Betty tells the prosecution that she does not want to testify against Axel. She says that, in addition to the love she feels for Axel, she received a phone call from a man who would not identify himself threatening to set fire to her house if she testified against Axel. She says that if she is forced to give evidence, she will say that Axel stayed home with her all night on 2 December last year and watched reruns of The Golden Girls with her.

Conan has also told the prosecution that he was mistaken as to the reason for the award of the Medal of Courage to Axel. If called to give evidence, he will say that he was confused when he gave his record of interview given that the fire to the Lads of Loss clubhouse was in all the newspapers. What Conan meant to say was that Axel was awarded the Medal of Courage for taking part in a rally against bikie laws.

**You are to assume that the *Evidence Act 1995* (Cth) applies to this trial. With reference to the *Evidence Act 1995* (Cth), and the relevant case law, discuss the evidentiary issues that arise from the above facts. [30 marks]**

**Question 3 – Answer both (a) and (b) below.**

You act for Albert, who is before the Court on one charge of gross indecency against a child under the age of 16 years. Albert is being tried by a judge and jury. Albert denies the charge and will be called to give evidence. The facts relating to the charge are as follows.

Albert worked in a day care centre. The prosecution has alleged that, on 11 February this year, Albert indecently assaulted Bridget, aged 4 years, in the cloakroom of the day care centre.

The prosecution intends to call Debbie, who was a parent volunteer at the centre on 11 February this year. Debbie will testify that she saw Albert take Bridget into the cloakroom. According to Debbie, Albert tried to sneak past her when he left the cloakroom and she thought at the time that he was trying to hide something. Two minutes later, Bridget emerged from the cloakroom and appeared to be upset.

The prosecutor has given you notice that Cassy, who is 9 years old, also will be called to give evidence at Albert's trial. The notice sets out the evidence the prosecutor anticipates Cassy will give. Cassy will say that 5 years ago Albert worked at a child care centre on the Gold Coast in Queensland which Cassy attended. According to Cassy, Albert indecently assaulted her when she was playing in the playground at the centre. Albert was never charged with the assault of Cassy. Cassy and Bridget do not know each other.

Finally, the prosecution intends to call Bridget. While Bridget, given her age, does not understand abstract concepts, she was able to tell the police what happened to her in the cloakroom when questioned by police about the incident.

- (a) You are to assume that the *Evidence Act 1995* (Cth) applies to this trial. With reference to the *Evidence Act 1995* (Cth), and the relevant case law, discuss all of the evidentiary issues that arise from the above facts. [20 marks]**

The prosecution also intends to call Florence. Florence is a child psychologist who specialises in the impact of sexual abuse on children. Florence has an undergraduate degree in psychology, and has been practicing as a registered psychologist for 30 years. You have been informed by the prosecutor that Florence will give the following evidence:

Young children between the ages of 3 to 6 often will appear upset after being sexually abused. Further, in my experience, such children tend not to lie when questioned about the abuse. Remarkably, my observations suggest that children with blond hair tend to be particularly truthful, whereas children and adults with darker hair sometimes tend to exaggerate or lie about the situation. I note that Bridget is blond, was 4 years old at the time of the alleged abuse, and one witness indicated that Bridget appeared to be upset when leaving the cloakroom on 11 February this year. This behavior is consistent with sexual abuse having occurred. Further, as Bridget has blond hair, the court should accept Bridget's version of the events as being truthful.

- (b) You object to the admissibility of Florence's evidence. With reference to the *Evidence Act 1995* (Cth), and the relevant case law, discuss the possible bases of your objection. [10 marks]**

**END OF EXAMINATION**